

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN GEORGE STAMOS, JR.,

Plaintiff,

No. CIV S-04-0295 MCE GGH P

vs.

CITRUS HEIGHTS POLICE,

Defendant.

ORDER

On February 17, 2005, the Ninth Circuit Court of Appeals remanded this matter for the limited purpose of allowing this court to rule on plaintiff's request for extension of time to file an appeal. On October 22, 2004, judgment was entered. On December 20, 2004, plaintiff filed a notice of appeal. On November 22, 2004, plaintiff filed a notice of correct address, which the Ninth Circuit construed as a motion for an extension of time to appeal.

A notice of appeal must be filed with the district court within thirty days after entry of judgment. Fed. R. App. P. 4(a)(1)(A). The district court may extend the time to file a notice of appeal if:

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1 (i) a party so moves no later than 30 days after the time prescribed by this Rule  
2 4(a) expires; and  
3 (ii) regardless of whether its motion is filed before or during the 30 days after the  
4 time prescribed by this Rule 4(a) expires, that party shows excusable neglect or  
5 good cause.

6 Fed. R. App. P. 4(a)(5)(A).

7 No extension under Rule 4(a)(5) may exceed 30 days after the prescribed time or  
8 10 days after the date when the order granting the motion is entered, whichever is later. Fed. R.  
9 App. 4(a)(5)(C).

10 Plaintiff filed his motion for extension of time to file his appeal within thirty days  
11 after entry of judgment. Fed. R. App. P. 4(a)(5)(A)(i). Plaintiff's notice of appeal was filed  
12 within thirty days after the time for filing his appeal had run. Fed. R. App. P. 4(a)(5)(C).  
13 Accordingly, the court considers whether plaintiff demonstrated good cause to grant the  
14 extension of time.

15 In the motion for extension of time, plaintiff stated that from October 7, 2004,  
16 through October 27, 2004, he was incarcerated in the El Dorado County Jail. Plaintiff stated that  
17 he did not receive any mail at California State Prison-Corcoran, his address of record, during that  
18 time. Plaintiff also stated that he had not received all of his out-to-court legal property as of  
19 November 17, 2004, i.e. the date he signed the request for extension of time.

20 On April 21, 2005, the court ordered plaintiff to file a declaration discussing when  
21 he received the October 22, 2004, judgment following his return to Corcoran. On April 28,  
22 2005, plaintiff filed a response to this order. Plaintiff states that he received the judgment on  
23 November 19, 2004. Because plaintiff did not receive judgment until November 19, 2004, the  
24 court finds good cause to grant plaintiff's motion for extension of time. The appeal filed  
25 December 20, 2004, is timely.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for extension of time to file his appeal, contained in his November 22, 2004, notice of correct address, is granted;

2. The Clerk of the Court is directed to serve this order on the Ninth Circuit Court of Appeals (Case No. 04-17510).

DATED: 6/7/05

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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